

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 22631 of 2007(T)

PETITIONER:

K.P.SIDDIQUE, AGED 43 YEARS,
S/O.MAMMU, KARIYAT POYIL, PULIYANAMBRAM,
KARIYAD.

BY ADV. SRI.T.M.ABDUL LATIFF

RESPONDENTS:

1.STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM.

2.THALASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
THALASSERY.

R1 BY GOVT. PLEADER MR.K.J.MOHAMMED ANZAR

R2 BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE,J.

W.P.(C) No.22631 of 2007

Dated: 13th November, 2007

JUDGMENT

The petitioner is aggrieved by Ext.P1 order by which the petitioner's application for forwarding his request for exemption from the DTP Scheme to the Government was rejected by the 2nd respondent-Municipality. The petitioner is the owner of a small plot of land having an extent of 9.5 cents and he wants to construct a residential building in that property. The case of the petitioner is that he has no other property for constructing a residential building. The Municipality is not inclined to entertain any application for permit for construction of any building on the property on the ground that as per the DTP Scheme the property is classified as 'Sector Center'.

2. Mr.I.V.Promod, Standing Counsel for the Thalassery Municipality submits that as per the DTP Scheme the property is classified as Sector Center and is earmarked for future development purposes, i.e., non-residential purposes. A detailed statement has been filed by the Standing Counsel wherein reference is made to the judgment of the Division Bench of this court in **Sayeesh Kumar v. State of Kerala** (2005(4) KLT 1027) in which the Division Bench held that even the Government has no power to grant zonal

exemption. But then in ground No.B of the Memorandum of Writ Petition the petitioner has contended as follows:

"In Ext.P1 the stand of the Municipality is that in respect of sector zone, no request to government for exemption for constructing residential building cannot be made is also not correct in law. Every thing turned upon the judgment of this Honourable Court reported in 2005 (4) KLT 1027 wherein it was held that government is having no power to grant exemption. But Town Planning Act and the reference to Section 13 is not applicable to Thalassery area. Hence any Town Planning Scheme notified in respect of Thalassery area is not in accordance with any law and the law laid down by the Full Bench of this Honourable Court whereby the government is even directed to take appropriate steps for giving permission of construction, was not taken note off by the Municipality. However in the decision reported in 2005 (3) SCC 61 it was pointed out that when under the Scheme a land is brought but if the Corporation or the Municipality as the case may be is not having sufficient financial resources to implement the scheme, the land owner shall not be put to prejudice and harassment without any correspondent benefit to the Municipality. No steps were taken so far for acquisition of the land and in such a situation ruling reported in 2005 (4) KLT 1027 is not good law at all and it is not applicable to Thalassery Municipality. Hence the petitioner is having the right of construction of a residential building and the Municipality may be directed to sanction the plan and to issue permit.

I do not find any specific objection taken in the statement to the ground raised as ground No.B.

3. Heard Mr.T.M.Abdul Latiff, counsel for the petitioner and Mr.I.V.Pramod, Standing Counsel for the Thalassery Municipality.

4. Mr.T.M.Abdul Latiff submits that the property upon which the petitioner wants to construct the residential building is the only property belonging to him and that in the area which is shown as

Sector Center in the master plan several residential buildings have been permitted already. The master plan to the extent it relates to the Sector Center has not been implemented at all in this Municipality though several decades have passed and the DTP Scheme has become oppressive. Learned counsel placed reliance on the Full Bench decision of this court in **Francis v. Chalakudy Municipality** (1999(3) KLT 560) and the decision of the Supreme Court in **Raju S.Jethmalani v. State of Maharashtra** [(2005) 11 S.C.C. 222]. Learned counsel also placed reliance on the Division Bench decision of this court in **Padmani v. State of Kerala** (1999(3) KLT 465) and submitted that till this date no notification under Section 4(1) of the Land Acquisition Act has been promulgated for acquisition of any portion of the petitioner's property or for that matter the area which is shown as Sector Center for the DTP Scheme has been acquired. Mr.I.V.Promod per contra placed reliance on the judgment of this court in **Sayeesh Kumar v. State of Kerala** (supra).

5. I find force in the submissions of Mr.T.M.Abdul Latiff founded as they are based on the judgment of the Supreme Court in **Raju S.Jethmalani v. State of Maharashtra** (supra) and the Full Bench judgment of this court in **Francis v. Chalakudy Municipality**

(supra). Accordingly, Ext.P1 is quashed and the Writ Petition will stand disposed of issuing the following directions:

The petitioner is directed to file an affidavit undertaking that in the event of a notification under Section 4(1) of the Land Acquisition Act for acquisition of any portion of his property being promulgated within a period of nine months from today, he will not claim any compensation for the building to be put up by him on the strength of the permit to be issued to him. Once such an affidavit is filed, the Municipality will consider the plan submitted by the petitioner for construction of the residential building and pass fresh orders. If the plan is otherwise in order, the Municipality will grant that application and issue permit to the petitioner. It is made clear that even after the expiry of the nine months, in the event of any genuine public purpose, it will be open to the Municipality to acquire the property in question. Under such an event, the petitioner will be entitled for adequate compensation not only for the land but also for the building to be constructed by him.

srd

PIUS C.KURIAKOSE, JUDGE